

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
The Uniendo a Puerto Rico Fund and the Connect USVI Fund)	WC Docket No. 18-143
)	
Connect America Fund)	WC Docket No. 10-90
)	

To: The Chief, Wireline Competition Bureau

PETITION FOR RECONSIDERATION OF VIYA

Virgin Islands Telephone Corporation dba Viya (“Viya”), by its counsel and pursuant to Section 1.429 of the Commission’s Rules,¹ respectfully seeks reconsideration of the Public Notice issued by the Wireline Competition Bureau (“Bureau”)² announcing location counts and reserve prices for the Uniendo a Puerto Rico Fund and Connect USVI Fund Stage 2 fixed support competitive proposal process.³ Specifically, Viya requests the Bureau to revise the Locations Public Notice to reflect location information that is consistent with the Commission’s direction in the *Stage 2 Order* reflecting accurate location counts for the U.S. Virgin Islands (“USVI”).⁴

¹ 47 C.F.R. ¶ 1.429.

² *Wireline Competition Bureau Releases List of Reserve Prices and Location Counts for the Uniendo a Puerto Rico Fund and Connect USVI Stage 2 Fixed Support Competitive Proposal Process*, Public Notice, DA 19-1300 (WCB rel. Dec. 19, 2019) (“Locations Public Notice”).

³ *See Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Order, 34 FCC Rcd 9109 ¶¶ 67, 70 (2019) (“*Stage 2 Order*”).

⁴ Viya does not seek reconsideration of any aspect of the Locations Public Notice pertaining to Puerto Rico.

I. INTRODUCTION AND SUMMARY

The USVI location counts in the Locations Public Notice were derived by the Bureau in a manner that is inconsistent with Commission’s direction and do not reflect accurate location counts for the USVI, as the Commission intended. In addition, the calculation of USVI business locations in the Locations Public Notice appears to include a mathematical error that artificially and inaccurately doubles the total business location count.

The need for location counts to be as accurate as feasible is particularly acute in this context. In the *Stage 2 Order*, the Commission determined that if the actual number of locations identified by a recipient of Connect USVI Fund fixed support proves to be lower than the number of locations set forth in the Locations Public Notice, the recipient’s support amount will be reduced on a *pro rata* basis.⁵

Facing a similar (but less severe) data problem on the mainland, the Commission has proposed to take a substantially different approach.⁶ In the Rural Digital Opportunity Fund (“RDOF”), the Commission intends to vote at its January meeting on an order that would determine the number of locations in each geographic area based on better data developed in the near future, after the support amounts are determined, and—critically—not to require any *pro*

⁵ *Stage 2 Order*, 34 FCC Rcd at 9145 ¶ 65. Within one year of the issuance of a public notice announcing that a recipient has won Stage 2 funding, the recipient is required to submit geolocation and other data specifying the number of actual locations that it is able to identify. Relevant stakeholders will be provided an opportunity to review and comment on this data, and it may be subject to an audit. *Id.*

⁶ See *Rural Digital Opportunity Fund*, Report and Order [draft], FCC-Circ2001-01 (rel. Jan. 9, 2020), available at <https://docs.fcc.gov/public/attachments/DOC-361785A1.pdf>.

rata reductions in support if the number of locations proves to be lower than those used in developing bidders support proposals (up to a generous threshold).⁷

Given the inconsistent and less accurate approach taken in the Connect USVI Fund, it is incumbent upon the Bureau to ensure that the Locations Public Notice includes the most accurate data regarding the location counts in the USVI. The Bureau also is bound by the Commission’s direction to use “Census Bureau” data in the Locations Public Notice. Thus, the Locations Public Notice should have specified the use of 2020 Census data or, barring that, 2010 Census data. The Bureau’s effort to update the 2010 Census data using information from other sources exceeded the directions contained in the *Stage 2 Order* and has resulted in *less accurate* location counts, and must be reconsidered.

II. THE USVI LOCATION COUNTS IN THE LOCATIONS PUBLIC NOTICE ARE INCONSISTENT WITH THE COMMISSION’S INSTRUCTIONS AND INACCURATE

In establishing the Connect USVI Fund, the Commission recognized the importance of using accurate data regarding location counts. Although the Commission directed the Bureau to rely on the CAM to set reserve prices and allocate support among areas,⁸ the Commission took a different approach with regard to location counts, specifically “to safeguard against inaccurate data.”⁹ In the *Stage 2 Order*, the Commission instructed the Bureau to use “the latest Census Bureau data to determine the actual deployment obligation”¹⁰ because “the most current Census

⁷ *Id.* at ¶ 46.

⁸ *Stage 2 Order*, 34 FCC Rcd at 9120 ¶ 20.

⁹ *Id.* at 9143 ¶ 60.

¹⁰ *Id.* at 9140 ¶ 61.

data will help give a better location count *at the time of award than the locations identified by the CAM.*”¹¹ The Commission therefore directed the Bureau “to publish ... its determination of the number of locations per geographic area, based on the most recent publicly available Census Bureau data for the Territories.”¹²

The Locations Public Notice, however, contains data that is inconsistent with the Commission’s direction to the Bureau and inaccurate as to the USVI.

First, the Locations Public Notice is inconsistent with the Commission’s direction because the location counts it contains are not from Census data. Instead, they represent an analysis of commercial and other data sources compiled by Commission staff, which was prepared for other purposes.¹³ These staff estimates started with 2010 Census Bureau data but then attempted to update it using commercial and other data.¹⁴ This is inconsistent with the clear direction in the *Stage 2 Order* to use Census data in the Locations Public Notice, and alone requires reconsideration.

Second, the attempt at updating the 2010 Census data using other data sources resulted in location counts that are *less* accurate, which is also inconsistent with the Commission’s stated intention that accurate data be used. To begin, the calculations include what appears to be a

¹¹ *Id.* (emphasis added).

¹² *Id.*; *see also id.* at 9143 n.224 (acknowledging that no data from the Census more recent than 2010 is available for the USVI).

¹³ Commission staff has indicated that the location data for the USVI in the Locations Public Notice represents a subset of nationwide staff estimates of served and unserved customers used primarily for the Commission’s Broadband Progress Reports. *See* FCC Wireline Competition Bureau, Staff Block Estimates, 2017 Update (“Block Estimates”), available at <https://www.fcc.gov/reports-research/data/staff-block-estimates>.

¹⁴ *See id.* (“All of the documents at the links below have been updated for 2017.”).

mathematical error in estimating business locations in the USVI. The Bureau appears to have relied on the Census Bureau’s 2012 Economic Census for the USVI to determine the number of business locations in the USVI,¹⁵ but the Bureau appears to have double-counted the number of business establishments, resulting in an overcount of approximately 2,414 locations.

Specifically, it appears that the Bureau properly aggregated the number of locations in each category of business locations set forth in the Census Bureau dataset (e.g., mining, utilities, construction, manufacturing, etc.), which totaled 2,414 locations, but then also incorrectly added to this figure the topline total of all USVI business locations reported in the Census Bureau table (e.g., “Total for all sectors”), thereby effectively double-counting every business location.¹⁶

The attempted updates also reduced the data’s accuracy, contrary to the Commission’s direction, by failing to reflect the substantial reduction in locations resulting from Hurricanes Irma and Maria. These two massive storms struck near the end of 2017, and their effects continued well into 2018. Yet the data used to generate the estimates in the Locations Public Notice was only inclusive of the period from 2010 to 2017, and therefore could not account for

¹⁵ Specifically, to determine USVI business locations, the Bureau appears to have used Table EC1200A1 (field: ESTAB / Number of Establishments), available at <https://www.fcc.gov/reports-research/data/staff-block-estimates>.

¹⁶ The business location data for Puerto Rico does not appear to replicate this error because the Puerto Rico table prepared by the Census Bureau, inexplicably, does not contain a topline total—i.e., the respective Puerto Rico table does not include a row labeled “Total for all sectors.” *See id.*

the storms' impact.¹⁷ There is no question that the storms decimated many structures and resulted in an exodus in population from the USVI.¹⁸

In addition, the CIA World Factbook data for the USVI, upon which the “updates” were based, appears to be internally inconsistent. The population for the USVI set forth in the Factbook for each year between 2010 to 2017 do not align with the (negative) population growth rate set forth in the Factbook for these years. Notably, the Factbook reports in one instance that the population in the USVI was 4.54 percent higher between 2016 and 2017, but in another

¹⁷ See Block Estimates, *supra* (“All of the documents at the links below have been updated for 2017.”).

¹⁸ See, e.g., US Virgin Islands Bureau of Economic Research, *USVI Annual Economic Indicators*, available at <http://www.usviber.org/wp-content/uploads/2016/11/ECON17july.pdf> (estimating the USVI’s resident population to be 106,405 in 2010; 102,008 in 2014; and 96,815 in 2017); US Virgin Islands Bureau of Economic Research, Economic Review Fiscal Year 2018-Fiscal Year 2019 Report, available at <http://www.usviber.org/wp-content/uploads/2019/03/Economic-Review-2017-2018-Released-Feb-2019.pdf> (estimating that 45,868 people were employed in civilian jobs in the USVI in 2018, representing a decrease of 5.3 percent from 2017); Federal Reserve Bank of New York by Jason Bram (Officer Research Economist), Puerto Rico and the U.S. Virgin Islands After Hurricanes Irma and Maria at 4 (Feb. 22, 2018), available at <https://www.newyorkfed.org/medialibrary/media/press/PressBriefing-PuertoRico-USVI-February222018.pdf> at 7 (“There was a large outflow of residents to the mainland after the storm, exacerbating the islands’ ongoing population decline of the past decade.”); CNN Analysis by John D. Sutter and Sergio Hernandez: “‘Exodus’ from Puerto Rico: A Visual Guide” (Feb. 21, 2018), available at <https://www.cnn.com/2018/02/21/us/puerto-rico-migration-data-invs/index.html> (“Between October 1 and December 31 of 2017, the US Postal Service received at least 6,590 change-of-address requests - nearly five times the amount received during the same months the previous year – from Puerto Rico and the U.S. Virgin Islands to the 50 states and the District of Columbia.”); Community Foundation of the Virgin Islands, *Community Needs Assessment: Understanding the Needs and Vulnerable Children and Families in the U.S. Virgin Islands Post Hurricanes Irma and Maria* at 130 (Feb. 2019), available at https://www.uvi.edu/academics/nursing/cerc/CFVI-CERC%20Community%20Needs%20Assessment%20E-Report_February%202019.pdf (“As a consequence of the damages to the public housing communities, the number of occupied units decreased in 2017 and 2018 on both St. Thomas and St. Croix. The public housing population on St. Thomas contracted by 10% and the number of occupied units decreased by 12% between 2016 and 2018. This contrasted with a 3% decrease in population and a 1% loss of occupied units on St. Croix between 2016 and 2018.”).

instance states that the USVI population fell 0.25 percent between 2016 and 2017.¹⁹ Any inference that the population of the USVI may have risen is not only at odds with the Factbook's stated negative population growth rate but also all other estimates which correctly note the declining USVI population.²⁰

The "most current Census Bureau data" for the USVI – and therefore the source most consistent with the Commission's direction to the Bureau – is the data derived from the 2020 Census.²¹ To the extent that the Bureau decides not to rely on 2020 Census data, it must rely on the next-most-recent Census data, which is from the 2010 Census. It does not appear that the *Stage 2 Order* provides the Bureau with discretion to update that data using other sources but, to the extent that the Bureau concludes that it does, the Bureau must make additional efforts to correct the inaccurate, inflated location counts for the USVI in the Locations Public Notice and, at a minimum, correct the mathematical error .

III. CONCLUSION

The location counts set forth in the Locations Public Notice are inaccurate, calculated in a manner that is inconsistent with the *Stage 2 Order*, and appear to include a mathematical error

¹⁹ See CTIA World Factbook, Virgin Islands, available at <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/vq.html>.

²⁰ See *supra* note 18.

²¹ The Bureau could specify use of 2020 Census data for the USVI in the corrected Locations Public Notice even if the data have not yet been released. Given that the 2020 numbers are certain to be lower than the data used in the original public notice, there will be no prejudice to bidders or the USVI population, whereas if inflated numbers are used, bidders and the USVI population will be harmed by an arbitrary reduction in support.

with respect to business locations. For these reasons, the Bureau should reconsider the USVI location counts in the Locations Public Notice as discussed herein.

Respectfully submitted,

VIRGIN ISLANDS TELEPHONE CORP.
DBA VIYA

By: /s/ L. Charles Keller
Phillip R. Marchesiello
L. Charles Keller
WILKINSON BARKER KNAUER, LLP
1800 M Street, NW, Suite 800N
Washington, DC 20036
202.783.4141

Its Attorneys

January 21, 2020